

## **MARK- UP**

### **HSC REGULATION 400M. Hospice Methodology (07/04)**

**HOSPICE CARE** as defined by state statute means an autonomous, centrally administered, medically directed, coordinated program providing home and outpatient care for the terminally ill patient and family, and which employs an inter-disciplinary team to assist in providing palliative and supportive care to meet the special needs arising out of the physical, emotional, spiritual, social and economic stresses which are experienced during the final stages of illness and during dying and bereavement. The care shall be available twenty- four (24) hours a day, seven (7) days a week, and provided on the basis of need, regardless of the ability to pay.

**HOSPICE PROGRAM** -Hospice program is defined as a public agency or private organization or subdivision or either of these that is primarily engaged in providing care to terminally ill individuals (Code of Federal Regulations, Title 42, Volume 2, Part 418).

**HOSPICE FACILITY** - A Hospice Facility is defined as a facility that houses hospice beds licensed exclusively to the care of terminally ill patients but not beds licensed to a hospital, nursing home or other assisted living or residential facilities. It can provide any of the four levels of hospice care. For purposes of this application, terminally ill patients are defined according to the Social Security Act as those individuals with a terminal diagnosis and a prognosis of six months or less if the diagnosed condition runs its normal course.

#### **I. Hospice Agencies**

This rule regulates the establishment of new hospice agencies and the expansion of existing hospice service areas.

##### **A. NEED**

1. Numeric need for a new hospice ~~or an expanded service area~~\* is demonstrated if the projected number of patients eligible for hospice per calendar year is ~~100~~ 25 or greater in the proposed service area (or expanded area). The projections for the proposed area would have to indicate a need for ~~100~~ 25 or more after the admissions for the existing hospices for the previous calendar year have been subtracted out from the total projected hospice patients. ~~(See Appendix A).~~
2. To calculate the number of projected hospice patients, the Crude Death Rate for each county from the Center for Health Statistics is divided by 100,000. The result is multiplied by the projected population by county for the projected year. The results for both cancer and non-cancer deaths from the most recent four years available from the Center for Health Statistics are averaged. The projected non-cancer deaths by county is multiplied by ~~15%~~ 17% and the cancer deaths by county is multiplied by ~~55%~~ 57%. The resulting total is the number of projected hospice patients for the projected year.

3. The number of patients admitted by hospices by county of residence from the previous reporting year will be subtracted from the number of projected hospice patients. The result will be the number of patients eligible for hospice for the projected year. ~~The Health Facility Services Agency will collect the number of patients admitted by each Hospice by county of residence as part of their licensing application sent out annually.~~

*Hospice need is projected five years in the future as of July 1st of each calendar year. The number of projected hospice patient deaths will be computed from the most recent Crude Death Rates available from the Center for Health Statistics, Arkansas Dept. of Health.*

\* The service area is the county.

#### **B. EXCEPTIONS**

~~1. In the absence of numeric need, an applicant must demonstrate that circumstances exist to justify the approval of a new hospice. The applicant must document either:~~

- ~~a. That at least 25% of the projected hospice patients in the county are not being served;~~
- ~~b. There are at least 25% of patients referred to hospices who are not being admitted within 48 hours (excluding cases where a later admission date has been requested). The applicant shall document the number of such persons.~~

#### **C. PRIORITIES — Requirements**

~~The Commission shall give preference to an applicant whom:~~  
Applicants are required to provide the following:

1. ~~Demonstrates~~ Documentation of financial support to provide cost efficient hospice care as measured by industry standards.
2. ~~Offers documentation to prove that existing agencies are not meeting the needs of the service area population.~~
2. ~~Has~~ Letters of support from physicians, hospitals (i.e. discharge planners), social workers and other healthcare providers who are currently and actively providing medical and or social services to residents of the community / county to be served in the application. ~~and state and local officials in the proposed service area.~~
3. A working address in the county in which the applicant is applying for a Permit. An

exception exists if an applicant has a hospice office in a contiguous county; in this case, the existing hospice office can serve as the address for the new application, providing that the total county to be served by the proposed application is within a 50-mile radius of the existing office.

4. A plan to educate physicians, hospital discharge planners and other appropriate health and social service providers about the need for timely referral of potential hospice patients.
5. Agreement to admit and serve all hospice patients regardless of ability to pay for services.
6. Assurance that the prescribed services are not limited by the patients' payment mechanism. This assurance should also state that the proposed hospice will not discontinue or diminish care provided to patients because of that patient's inability to pay for that care.
7. Agreement to provide timely and accurate reporting data to the Health Services Permit Agency as requested.

D. Regardless of numeric need, no new hospice agency will be approved unless each hospice agency servicing the proposed service area has been licensed and operational for at least ~~two~~ one years.

## II. HOSPICE FACILITIES

This rule regulates the establishment of new hospice facilities and expansion of existing hospice facilities.

The objective of this Methodology is to ensure that an adequate supply of hospice beds are available and accessible while avoiding the proliferation of unneeded hospice facilities in the service area.

A. APPLICATION REQUIREMENTS are based on federal guidelines including Section 1861 of the Social Security Act that states that a hospice must provide all levels of hospice care and cannot choose to only operate an in-patient facility. It must offer all levels of care including general in-patient, routine, respite and continuous care. The only eligible applicants for a Hospice Facility are those agencies that have operated a licensed Hospice Agency for at least one year prior to seeking application for a Hospice Facility.

B. BED NEED – The calculations to determine the number of patients eligible for hospice services are the same as those found in Section I. A2.

The formula to determine the need for hospice beds is based on the federal allowance of 20% in-patient days and the Arkansas average of 5.6% in-patient days (5.2% general inpatient and 0.5% respite). The Arkansas average is rounded to 6%. The mean of 6% and 20% is 13%. This mean (13%) is multiplied times the number of projected hospice patients in the county to determine the county need for hospice beds.

Applicants can apply for a minimum of 4 beds and a maximum of 36 beds.

Applicants who have a facility and who propose to expand: (1) can not expand to greater than the maximum number of beds per county (See Bed Need Book Appendix A) and (2) can not exceed 36 beds.

*Hospice need is projected five years in the future as of July 1<sup>st</sup> of each calendar year. The number of projected hospice patient deaths will be computed from the most recent Crude Death available from the Center for Health Statistics, Arkansas Dept. of Health and the most recent available population estimates obtainable from the US Census Bureau.*

\* The service area is the county

#### C. ~~PRIORITIES~~: Requirements

~~The Commission shall give preference to an applicant whom:~~  
Applicants are required to provide the following:

1. ~~Demonstrates~~ Documentation of financial support to provide cost efficient hospice care as measured by industry standards.
2. ~~Offers documentation to prove that existing agencies are~~  
~~not meeting the needs of the service area population.~~
2. Letters of support from physicians, hospitals (i.e. discharge planners), social workers, and other healthcare providers who are currently and actively providing medical and / or social services to residents in the community / county to be served in the application. ~~and state and local officials in the proposed service area.~~
3. A street address and city for the proposed facility in the county in which the applicant is applying for a Permit.
4. Documentation of a willingness to work with other hospice providers to admit patients from other hospices and documentation of an established plan for transfer of patients between other hospice agencies and the proposed facility.
5. Agreement to admit and serve all hospice patients regardless of ability to pay for services.
6. Assurance that the prescribed services are not limited by the patients' payment mechanism. This assurance should also state that the proposed hospice will not

discontinue or diminish care provided to patients because of that patient's inability to pay for that care.

7. Agreement to provide timely and accurate reporting data to the Health Services Permit Agency as requested.

**D. PRIORITIES:**

~~The Commission shall give preference to an applicant who:~~

- ~~1. Demonstrates financial support to provide cost efficient hospice care.~~
- ~~2. Has letters of support from healthcare providers and state and local officials in the proposed service area.~~
- ~~3. Indicate a commitment to serve patients regardless of the ability to pay.~~

**QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS**  
**WITH THE ARKANSAS LEGISLATIVE COUNCIL AND JOINT INTERIM COMMITTEE**

<b>DEPARTMENT/AGENCY</b>	Arkansas Health Services Permit Agency
<b>DIVISION</b>	
<b>DIVISION DIRECTOR</b>	Deborah Frazier
<b>CONTACT PERSON</b>	Mary Brizzi
<b>ADDRESS</b>	5800 W. 10 <sup>th</sup> , Suite 805, Little Rock, AR 72204
<b>PHONE NUMBER</b>	501-661-2501 <b>FAX NO.</b> 501-661-2399 <b>E-MAIL</b> mbrizzi@healthyarkansas.com

**INSTRUCTIONS**

- A. Please make copies of this form for future use.
- B. Please answer each question **completely** using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire attached to the front of two (2) copies of your proposed rule and mail or deliver to:

**Donna K. Davis**  
**Subcommittee on Administrative Rules and Regulations**  
**Arkansas Legislative Research**  
**Bureau of Legislative Research**  
**Room 315, State Capitol**  
**Little Rock, AR 72201**

\*\*\*\*\*

1. What is the short title of this rule?

HSC Regulation 400M. Hospice Methodology

2. What is the subject of the proposed rule?

Need Methodology for Hospice Agencies and Facilities

3. Is this rule required to comply with federal statute or regulations? Yes ☐ No ☒

If yes, please provide the federal regulation and/or statute citation.

4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes ☐ No ☒

If yes, what is the effective date of the emergency rule?

When does the emergency rule expire?

Will this emergency rule be promulgated under the regular provisions of the Administrative Procedure Act?  
Yes ☐ No ☐

5. Is this a new rule? Yes ☐ No ☒ If yes, please provide a brief summary explaining the regulation.

Does this repeal an existing rule? Yes ☐ No ☒ If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does.

Is this an amendment to an existing rule? Yes ☒ No ☐ If yes, please attach a markup showing the changes in the existing rule and a summary of the substantive changes. Note: The summary should explain what the amendment does, and the mark-up should be clearly labeled "mark-up".

6. Cite the state law that grants the authority for this proposed rule. If codified, please give Arkansas Code citation.

Arkansas Code Annotated 20-8-103. This code gives us both the broad authority to promulgate rules and the specific authority for this regulation.

7. What is the purpose of this proposed rule? Why is it necessary?

These changes bring the methodology closer to the number of patients being served by Hospice in Arkansas.

8. Will a public hearing be held on this proposed rule? Yes ☒ No ☐

If yes, please complete the following:

Date: December 10, 2004

Time: 10:00

Place: State Police Headquarters, I-30 and Geyer Springs, Little Rock, AR.

9. When does the public comment period expire for permanent promulgation? (Must provide a date.)

November 19, 2004

10. What is the proposed effective date of this proposed rule? (Must provide a date.)

January 16, 2005 or 10 days after it is filed as a final rule.

11. Do you expect this rule to be controversial? Yes ☐ No ☒ If yes, please explain.

12. Please give the names of persons, groups, or organizations that you expect to comment on these rules. Please provide their position (for or against) if known.

Names	Category	For	Against
Arkansas Hospice Association	Trade	<input type="checkbox"/>	<input type="checkbox"/>
Arkansas Health Care Association	Trade	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>

		<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>



## **FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

**DEPARTMENT:** Arkansas Health Services Permit Agency  
**DIVISION:** \_\_\_\_\_  
**PERSON COMPLETING THIS STATEMENT:** Mary Brizzi  
**TELEPHONE NO.:** 5016612501 **FAX NO.:** 5016612399 **EMAIL:** mbrizzi@healthyarkansas.com

## **FINANCIAL IMPACT STATEMENT**

To comply with Act 1104 of 1995, please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

### **SHORT TITLE OF THIS RULE:**

HSC Regulation 400M. Hospice Methodology

- Does this proposed, amended, or repealed rule or regulation have a financial impact?  
Yes ☒ No ☐
- If you believe that the development of a financial impact statement is so speculative as to be cost prohibitive, please explain.
- If the purpose of this rule or regulation is to implement a federal rule or regulation, please give the incremental cost for implementing the regulation. Please indicate if the cost provided is the cost of the program.

### **Current Fiscal Year**

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_  
Total \_\_\_\_\_

### **Next Fiscal Year**

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_  
Total \_\_\_\_\_

- What is the total estimated cost by fiscal year to any party subject to the proposed, amended, or repealed rule or regulation? Identify the party subject to the proposed regulation, and explain how they are affected.

### **Current Fiscal Year**

\$ \_\_\_\_\_  
\$ \_\_\_\_\_  
\$ \_\_\_\_\_  
\$ \_\_\_\_\_

### **Next Fiscal Year**

\$0.00 \_\_\_\_\_  
\$ \_\_\_\_\_  
\$ \_\_\_\_\_  
\$ \_\_\_\_\_

5. What is the total estimated cost by fiscal year to the agency to implement this regulation?

**Current Fiscal Year**

\$160.00

\$ \_\_\_\_\_

**Next Fiscal Year**

\$0

\$ \_\_\_\_\_